

AUG 20 2009

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK  
BY: *J. Braxton*  
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JOSEPH BOWLER, ) Civil Action No. 7:09-cv-00238  
Plaintiff, )  
 )  
v. ) MEMORANDUM OPINION  
 )  
WARDEN CHIEF TRACY S. RAY, et al., ) By: Hon. James C. Turk  
Defendants. ) Senior United States District Judge


Plaintiff Joseph Bowler, a Virginia inmate proceeding pro se, filed a civil rights complaint, pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1343. Plaintiff did not submit payment for the \$350 filing fee with his complaint. See 28 U.S.C. § 1914(a). Plaintiff had at least three non-habeas civil complaints or appeals previously dismissed as frivolous or for failing to state a claim upon which relief may be granted. See Bowler v. Braxton, No. CA-04-6035 (W.D. Va. Dec. 3, 2003), appeal dismissed, 88 Fed. App'x. 612 (4th Cir. 2004) (unpublished); Bowler v. Young, No. CA-03-148 (W.D. Va. Mar. 6, 2003), appeal dismissed, No. 03-7113 (4th Cir. Oct. 8, 2003) (unpublished); Bowler v. Young, No. CA-03-231 (W.D. Va. Apr. 7, 2003), appeal dismissed, 77 Fed. Appx. 182 (4th Cir. 2003) (unpublished).

In accordance with the three-strikes provision of 28 U.S.C. § 1915(g), the Court of Appeals for the Fourth Circuit previously advised plaintiff that he needed to submit the \$350.00 filing fee or establish an imminent threat of serious physical harm to proceed with a civil suit. See Bowler v. Braxton, No. CA-04-6035 (W.D. Va. Dec. 3, 2003), appeal dismissed, 88 Fed. App'x. 612 (4th Cir. 2004) (unpublished). After reviewing plaintiff's submissions in this civil action, it is clear that plaintiff does not allege any facts indicating that he is currently under any imminent threat of any serious physical injury within the meaning of 28 U.S.C. § 1915(g). Based on the foregoing and the complaint, the court finds that plaintiff has failed to demonstrate any

imminent danger of serious physical harm in the complaint and plaintiff has not paid the \$350.00 filing fee despite being previously advised of having three strikes. See 28 U.S.C. §§ 1914(a), 1915(g). Accordingly, the court dismisses the complaint without prejudice for failure to pay the filing fee at the time of filing the complaint. A separate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the plaintiff.

ENTER: This 10<sup>th</sup> day of August, 2009.

  
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Senior United States District Judge